

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 633 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SANDOZ INDIA LTD

Appearance:

MR BY MANKAD, ADDL. PUBLIC PROSECUTOR for appellant
MR AI SURTI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 06/10/98

ORAL JUDGEMENT

State, being aggrieved by an order of acquittal recorded by Judicial Magistrate First Class, Idar on 19.4.1991 in Criminal Case No. 244/90 wherein the respondents (hereinafter referred to as the accused) were tried for an offence punishable under Section 10 the Seeds Act, 1966 (hereinafter referred to as the Act) has preferred this appeal.

2. Virendrakumar Amrutlal Doshi, PW. 1, discharging his duties as Agricultural Inspector, duly appointed as such vide notification dated 13.1.1981, in his deposition has stated that he visited the premises of the accused No.1 on 24.2.1989 wherein 'Truthful' brand Cotton Seed was being processed. From processed lot No. 8935, sample was collected after giving intimation to Accused No.3 in accordance with the provisions contained in the Act and Rules, in the presence of two panchas. Three bags were selected and sealed as per the procedure prescribed under the Seeds Rules 1968 (hereinafter referred to as the Rules). It is further stated by the Seeds Inspector PW. 1 that one sample was forwarded to the Laboratory at Gandhinagar for analysis. Intimation was sent, vide report exh. 21, that genetic test is not completed and after completion of the same, report will be submitted. Thereafter, on submission of report by the Seed Analyst, a copy of which is produced on the record, vide Exh. 24, notice was given to accused No.1, vide Exh.25. Vide Exh. 29, complainant sought consent for prosecuting the accused which has been granted, vide Exh. 30. On receipt of the consent, prosecution came to be launched against the accused -the manufacturer, the person in charge and the person who was present at the time of processing. The trial Court, on appreciation of evidence, acquitted the accused on the grounds that panchnama was not drawn at the time of collection of samples, independent persons have not been examined and the Seed Inspector has committed breach of provisions contained in the Act as well as the Rules while collecting and forwarding the samples.

3. Before me, learned Additional Public Prosecutor Mr. Mankad argued that the Agricultural Inspector after following the procedure has collected the samples, out of which one was forwarded to the Seed Analyst; On analysis the Seed Analyst has opined that on genetic test, it is found that the sample is mixed with 14.28% of different seeds; Therefore, the accused are required to be convicted and sentenced as provided in the Act.

4. Learned advocate for the accused, Mr. Surti made various submissions. He pointed out from the records that the Seeds Analyst has not at all followed the procedure prescribed under the Act and Rules and, therefore, the benefit must go to the accused.

5. Section 15 of the Act prescribes the procedure to be followed by Seed Inspectors. Section 16 of the Act prescribes the procedure to be followed by Seed Analyst on receipt of the sample under sub-section 2 of Section

15 of the Act. Under section 25 of the Act, Government has framed Rules, which are published in the gazette on 29.8.1968. Part X of the Rules prescribe the procedure for sealing, fastening, despatch and analysis of the samples. Mr. Mankad, learned Additional Public Prosecutor could not point out from the records that the Seeds Inspector has followed the procedure while collecting the sample. Apart from that, in the instant case, as per Rule 29, along with the sample, a memorandum in Form V is required to be forwarded, which has been done. However, rule 30 requires that memorandum and impression of seal used to seal the packet should be sent to the Seed Analyst separately by registered post or delivered to him or to any person authorised by him. In the instant case, there is no evidence indicating that such a procedure has been followed by the Inspector. The Court would have presumed that official acts are performed in accordance with law, but in the instant case, reading the report of the Seeds Analyst, there is nothing to show that to the Seed Analyst, memorandum as contemplated under Rule 30 was forwarded.

6. Having gone through the records, I find that the Food Inspector has committed breach of the provisions contained in the Act and the Rules while collecting and forwarding the samples. Hence other submissions made by the learned advocate for the accused are not required to be considered as I propose to dispose of this appeal on this short question.

In the result, the appeal stands dismissed.

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